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Mark D. Fox, Esq.
558 Sutter Street
Suite 555
San Francisco, CA 94102

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Application Number: 10/554,022

Title: METHOD OF GENERATING A SMS OR MMS TEXT MESSAGE FOR RECEIPT BY A WIRELESS INFORMATION DEVICE

Inventor Name: Daniel Michael Doulton

Art Unit: 2617

PCT Filed: April 22, 2004

Dear United States Patent and Trademark Office:

RE: Certificate of Hand Delivery Mailing of Appeal Brief and Deposit Account authorization

Please find attached in the above referenced application the following sent by hand delivery:

Appeal Brief (39 pages)

1.132 Affidavit of Daniel Michael Doulton (8 pages)

Further the Director is hereby authorized to charge the \$510.00 filing fee for filing under 37 CFR 41.20(b)(2) (Fee Code 1402/2402) to Deposit Account No. 504620.

Respectfully Submitted,

Mark D. Fox, Esq.
Reg. No. 38,677

APPEAL BRIEF

Title of Application METHOD OF GENERATING A SMS OR MMS TEXT MESSAGE
FOR RECEIPT BY A WIRELESS INFORMATION DEVICE

Application number 10/554,022

PCT Filing date Apr. 22, 2004

appellant Daniel Michael Doulton

Examiner Joel Ajayi

Art Unit 2617

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Real party in interest

The real party in interest is SpinVox Limited, the assignee of record, an English company (Registered No: 04825183) with its registered address at Wethered House, Pound Lane, Marlow, Buckinghamshire SL7 2AF, United Kingdom.

Related appeals and interferences

There are no appeals, judicial proceedings, or interferences known to the appellant.

Status of claims

All claims 1-20 inclusive were rejected by final rejection filed on June 20, 2008 (hereinafter "Final Rejection").

Status of amendments

No amendments have been filed subsequent to the Final Rejection.

Summary of claimed subject matter

Claim 1 is the only independent claim in the application. Figure 1 of the application, as further explained by paragraphs [0058] to [0067], shows the nature and scope of claim 1. Alternative embodiments of the claimed invention are shown in Figures 2 and 3. The invention is a speech-to-text conversion system for voice messages spoken into a mobile telephone that creates and assigns a unique i/d to the voice message, converts the voice message to an audio file format, sends the audio file to a voice to text transcription system to enable an operator to intelligently transcribe the voice message into a transcribed text message, embeds the unique i/d in the transcribed text message, and causes the transcribed text message to be sent to a required destination.

Grounds of rejection to be reviewed on appeal

Although the appellant reserves the right to analyze each claim individually in this brief, the Examiner's rejections in the Final Rejection for review for claims 1-20, inclusive, can be divided into two separate categories, or groups.

The grounds of rejection for review for claims 1, 3-6, 13, 14, and 17-20 (hereinafter collectively "Group I Claims") are whether the Group I Claims are unpatentable under 35 U.S.C. 103 (a) over Davis et al., U.S. Patent Application Number: 2005/0020288 (hereinafter "Davis") in view of McLaughlin et al., U.S. Patent Application Number: 2006/0058049 (hereinafter "McLaughlin"), in further view of Cruickshank, U.S. Patent Application Number: 2002/0077082 (hereinafter "Cruickshank").

The grounds of rejection for review for claims 2, 7-12, 15, and 16 (hereinafter collectively "Group II Claims") are whether the Group II Claims are unpatentable under 35 U.S.C. 103 (a) over Davis in view of McLaughlin, in further view of Cruickshank, and in further view of Martin, U.S. Patent Number: 6,606,373 (hereinafter "Martin").

Argument

The appellant's contends, and will show herein, that the Examiner's rejections of claims 1 to 20 inclusive were based on a significantly flawed analysis of 103(a) obviousness and requests that these rejections be traversed accordingly. The appellant will show in support of its position the following:

1. Prior art cited by the Examiner to establish "known" prior art elements in the claimed invention fails to teach the prior art elements in question.

2. The combination of the prior art elements cited by the Examiner fails to establish obviousness for the claimed invention.
3. The Examiner failed to review evidence of nonobviousness of the claimed invention "as a whole" on the entire record.
4. New evidence of secondary considerations (that only became publically available after the appellants' response of March 17, 2008) must be considered as part of the obviousness analysis.

1. The prior art does not teach "known elements" in the claims

"Reviewing a claimed invention for compliance with 35 U.S.C. 102 and §103 begins with a comparison of the claimed subject matter to what is known in the prior art." MPEP 2106 VI.

In the Final Rejection the Examiner cites prior art references to establish that all the prior art elements in the claims were "known"; however, on inspection of these references, the Examiner failed to establish that at least three elements were "known". Further the appellant notes that one possible reason why this happened is because the Examiner may have inadvertently applied hindsight to the analysis.

a. The prior art does not teach the creation of a unique i/d for the voice message

The prior art cited by the Examiner does not teach the steps of creating of a unique i/d or assigning the unique i/d to the voice message. In the Final Rejection at Page 4, 3rd paragraph the Examiner cites Cruickshank to support his position:

"In an analogous art, Cruickshank discloses creating a unique id (paragraph 19, lines 1-6); assigning the unique id to the voice message (paragraph 19, lines 1-6)."

It is the appellant's position that this statement is incorrect. The language of Cruickshank cited by the Examiner says nothing about the creation of a unique i/d or assigning the unique i/d to the voice message. The text cited by the Examiner is as follows:

"While storing an MP3 format version of a voice message, additional 'envelope' information may be stored. Additional information that is typically stored associated with a voice message includes calling line ID, the time of day the voice message was received and an indication of the urgency of the voice message." Cruickshank at paragraph 19, lines 1-6.

The text speaks for itself. There is no mention of a unique i/d or any other similar element which is unique to the voice message. Further the sentence in Cruickshank immediately after the Examiner's cited text says:

"This additional information may be stored in text fields that are provided for in the aforementioned standard that defines MP3 file compression." Cruickshank at paragraph 19, lines 6-8.

From the above it is clear the prior art cited by the Examiner does not teach the creation of a unique i/d or assigning the unique i/d to the voice message. The cited text merely refers to additional text information being placed in standard text fields in an MP3 compressed file. Therefore it is appellant's position that the citation provided by the Examiner completely fails to establish this step as being known prior art, and as a consequence the rejections to the claims are traversed and should be granted accordingly.

b. The prior art does not teach embedding an i/d or other data into the text message

Further the prior art reference cited by the Examiner does not teach the element of embedding the unique i/d into the text message. Moreover the prior art reference cited by the Examiner does not teach embedding into the transcribed text message any type of ID (unique or otherwise) or any information or data that is external to the content of the voice message.

In the Final Rejection the Examiner cites Davis to support his position of §103 (a) obviousness:

"f. Embedding the unique id in the transcribed text message (the voice message, which includes the caller ID/name/number as disclosed by Cruickshank below, is transcribed into a text message) (paragraph 24, lines 7-12)." Final Rejection at Page 3, 4th paragraph.

It is the appellant's position that this statement is incorrect. The language in Davis cited by the Examiner says nothing about embedding a unique i/d, ID, information or data external to the voice message into the transcribed text message. The text cited by the Examiner (which is describing a series of steps in Fig. 2 of Davis) is as follows:

"The method 50 can query the caller if they want to leave at least a voice message or an instant message. The method 50 would then record a voice message from the caller to the callee and transcribe the voice message to a text message at step 60 when the caller selected the instant message option at step 58."

Again the text speaks for itself. There is no mention of a unique i/d, an ID, or information or data external to the voice message being embedded into the transcribed text message. In addition, and more importantly, the citation does not even refer to any ID (unique or

otherwise) or any information or data that is external to the content of the voice message. The citation only describes transcribing a voice message to a text message.

Therefore it is appellant's position that the citation provided by the Examiner completely fails to establish this step as being known prior art, and as a consequence the rejections to the claims are traversed and should be granted accordingly.

c. Impermissible hindsight may have been applied to the analysis

It is the appellant's position that there is evidence from the text of the Final Rejection that shows that impermissible hindsight might have been inadvertently applied in the analysis. This problem is well-recognized and understood in that when examining patents “[t]he tendency to resort to “hindsight” based upon appellant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” MPEP 2142.

As stated in MPEP 2142, although the difficulties of not applying hindsight are recognized, the tendency to apply hindsight must be avoided. Yet the text of the Final Rejection implies that the Examiner has applied hindsight in the analysis.

At Page 3, 4th paragraph (in describing the embedding of the unique i/d into the text message) the Final Rejection states:

“[T]he voice message, which includes the caller ID/name/number as disclosed by Cruickshank below...”

Further at Page 4, 4th paragraph the Final Rejection states:

“...by including an ID with the voice message, as taught by Cruickshank,...”

Yet as shown above, Cruickshank does not support the creation of a *unique i/d*. From the above text of the Final Rejection it appears that the Examiner is equating the “caller ID/name/number”, or “an ID” mentioned in Cruickshank as being equivalent to the *unique i/d* of the claimed invention. However, this is not a valid position. There is no teaching of a *unique i/d* in Cruickshank. It is the specification, and not Cruickshank, that teaches the creation of a *unique i/d* and assigning the *unique i/d* to the voicemail by stating:

“[0060] A link (unique i/d) to the original voicemail file is generated--this i/d can just be a Hash of the time/date & caller number.”

Therefore it is appellant’s position that this evidence shows impermissible hindsight being inadvertently applied by the Examiner in their analysis and as a consequence the rejections to the claims are traversed and should be granted accordingly.

d. The prior art does not teach sending the audio file to a text transcription system

Step (e) of claim 1 starts as follows:

“(e) sending the audio file to a voice to text transcription system...”

The Examiner cites McLaughlin at paragraph 209, lines 9-14 as prior art that teaches the sending of the audio file to a text transcription system; however, on inspection of McLaughlin this reference fails to teach the sending step. The prior art cited by the Examiner teaches a method of playing back an audio file over a public switched telephone network (PSTN) line to an operator, and not the claimed step of sending the audio file to a voice to text transcription system.

The invention in McLaughlin is a communication system designed for hearing impaired users.

The communication system as described and depicted in Fig. 1 of McLaughlin is a modified ITU/TDD/Voice Modem with additional capabilities and functionalities. The citation relied on by the Examiner to support his position that McLaughlin teaches the audio file being sent to a voice to text transcription system occurs in section 4 of McLaughlin which addresses the issue "how to translate the voice message into text for the deaf user" (paragraph 200, lines 4-6). McLaughlin's solution to this problem is to use a "relay service staffed by human operators" (paragraph 202, lines 1-5). McLaughlin then identifies "several issues raised in this regard such as how to "play" the voice message to the relay operator. This includes provision for operator control of the audio recording such as pause, rewind, forward and stop of the audio playback by the relay operator..." (paragraph 203, lines 1-4). The solution provided in McLaughlin at paragraphs 204 and 205 is to have the communication system store the voice mail message as an audio file and then play the audio file over a regular PSTN telephone line to the relay operator, with the operator using DTMF tones over the phone line to the communications system to control the functions for playing the audio file over the phone line. Further although McLaughlin makes reference to the internet in its specification at [0006], the specification never teaches the step of sending the audio file to a voice to text transcription system over the internet or over any other communication network. Although McLaughlin does teach the conversion of the voice message to an audio file as correctly cited by the Examiner, the audio file itself only resides in the modified ITU/TDD/Voice Modem. The citation used by the Examiner (paragraph 209, lines 9-14) to prove at step (e) of claim 1 as being known prior art

simply refers to the playback of the audio file over a SVD (simultaneous voice and data) modem connection between McLaughlin's communication system (i.e. the modified ITU/TDD/Voice Modem) and a relay operator, and nothing more.

Therefore it is appellant's position that the citation provided by the Examiner completely fails to establish this step as being known prior art, and as a consequence the rejections to the claims are traversed and should be granted accordingly.

2. The prior art fails to teach the combination of the elements as claimed

The question of §103 obviousness, and the combination of known elements, was recently addressed by the US Supreme Court decision, *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. ___, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007) (hereinafter "KSR").

"[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.

Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." *KSR* at 550 U.S. at ___ 127 S.Ct. at ___, 82 USPQ2d at ___ (citing *United States v. Adams*, 383 U. S. 39).

It is the appellant's position that even if it were possible for the Examiner to overcome all the above issues to establish all of the elements to be "known" prior art elements, the combination of these elements as claimed would not have been obvious to a person of ordinary skill in the relevant field at the time application was submitted. The appellant's position is supported by the record in this case which clearly shows that the Examiner only tried to pick elements for "demonstrating that each of its elements was, independently, known in the prior art" and did no more. This type of obviousness analysis is in clear contradiction to the above language from *KSR*.

In addition the appellant also notes that unlike the case cited above in *KSR*, a case involving the combination of two (2) known devices, the Examiner needed to "cherry-pick" steps from three (3) prior art references for the Group I Claims, and four (4) prior art references for the Group II Claims to support his 103 obviousness position. The appellant notes that the need for the Examiner to go through this process raises serious questions about the Examiner's analysis especially in light of the above language from *KSR* and the problems with some of the Examiner's citations as explained earlier.

In addition, although the prior art references cited by the Examiner are in the telecommunications field, none of them refer to similar inventions. Davis describes an instant messaging system, McLaughlin describes a PSTN modem-based system for the hearing impaired, Cruickshank describes a voice message presentation system for personal wireless devices, and Martin is a voice message to text message conversion system that matches subparts of a voice message to stored audio files.

Further, although it is the closest subject matter to the claimed invention on its face, the Martin patent was only cited by the Examiner for establishing additional prior art elements for the narrower Group II Claims.

This last fact is illustrative of the main issue concerning the combination of prior art elements cited by the Examiner. Even if the Examiner could establish that the prior art elements were known (the appellant vigorously contends this fact) the combination of these prior elements was not obvious at the time of invention. If they were obvious the Examiner would not have needed to pull together such selected, disassociated elements from three (and four) different applications in order to support his position of 103(a) obviousness. This issue, the combination of the prior art elements not being obvious, is further explained for the claims in more detail as follows:

Group I Claims

As explained above the Examiner found the Group I Claims (1, 3-6, 13, 14, and 17-20) to be obvious in view of Davis, in view of McLaughlin et al, and in further view of Cruickshank. It is the appellant's position that the Examiner's analysis is incorrect.

Claim 1

Claim 1 is the only independent claim in the application. To support Examiner's position of obviousness for claim 1 the Examiner cited Davis for steps (a) and (f) steps, Cruickshank for steps (b) and (c), and McLaughlin for the steps (d), (e) and (g).

First, the Examiner cites Davis to establish steps (a) and (f) of claim 1 as being known in the prior art. As described above it is appellant's position that the citation in Davis used by the

Examiner failed to establish that step “(f) embedding the unique i/d in the transcribed text message” (or any type of ID) was taught in the prior art.

Next the Examiner cites McLaughlin to establish steps “(d) converting the voice message to an audio file format”, “(e) sending the audio file to a voice to text transcription system to enable an operator to intelligently transcribe the voice message into a transcribed text message” and “(g) causing the transcribed text message to be sent to a required destination” as being known prior art elements. Yet on closer examination it is clear that McLaughlin’s teachings are limited because they refer to a PSTN modem-based system and not an internet based system. As explained above, the communication system taught by McLaughlin is a modified ITU/TDD/Voice Modem with additional capabilities and functionalities. For processing voice messages left for a deaf person (Section 4, [0200]-[0212]) McLaughlin’s modified ITU/TDD/Voice Modem system either calls the voice mail system and then converts the voice mail to an audio file [0206] or, the voice mail system itself sends an audio file directly to the communication system [0207]; although, McLaughlin provides no teaching on how the voice mail system sends the audio file to the communication system.

In the process of creating the audio file from the voice message McLaughlin describes the modified ITU/TDD/Voice Modem as either calling the voice mail system at periodic time intervals or calling the voice mail system in response to a notification from the voice mail system that a new voice message has arrived [0206]. The audio file is then processed by a relay service (that uses a person to transcribe the message) phoning the communication system over a regular PSTN phone line [0205-0206] in order to listen to audio file. The transcribed text is

then sent back to the communication system [0213] by the human operator. Accordingly in McLaughlin the destination of the converted text message is the same location as the audio file: i.e. the modified ITU/TDD/Voice Modem communication system. Further McLaughlin is silent on how the relay service knows, or is notified, about the presence of a new audio file on the communication system.

This lack of teaching from McLaughlin shows why the combination of prior art elements (even if all could be proven) would not meet the requirements for 103(a) obviousness. Apart from creating an audio file within the communication system device, the voice to text conversion process in McLaughlin does not envision the content of a voice mail message being "moved" through a series of systems and services as part of the voice to text conversion process. In McLaughlin the audio file only resides on the modified ITU/TDD/Voice Modem communication system and nowhere else. The audio file is not sent to another system for processing.

The Examiner then cites Cruickshank for the two remaining steps of claim 1 (i.e. (b) creating a unique i/d and (c) assigning the unique i/d to the voice message) but the reasons for including these steps in the claimed invention are not obvious from the teachings of Cruickshank. As explained above, it is the appellant's position that the Examiner failed to establish the creation of the unique i/d steps as being known in the prior art. Further, even if the Examiner could establish this, Cruickshank fails to teach why one would add these two steps at the *beginning* of a voice-to-text conversion system for processing voice mail messages. In its specification, Cruickshank describes methods for displaying voice messages on a handheld device, i.e. an end user device. And although Cruickshank mentions IDs (but not unique i/ds) being associated to

processed voice mail messages that are displayed on the end user device [0019] and [0032] i.e. at the end of the process, Cruickshank provides no insight or guidance as to why it would be important for IDs to be assigned to voice mail messages at the beginning of a method for processing voice mail messages.

For the foregoing reasons, it is appellant's position that even if it were established that the individual elements of the prior art references could be established as being "known" prior art that the combination of the prior art references was not obvious at the time of invention, and therefore the earlier rejection of claim 1 is now traversed and claim 1 and all dependent claims (i.e. claims 2-20) be granted.

Claim 3

As claim 3 is dependent on claim 1, all the arguments on claim 1 are incorporated herein.

Further the Examiner cites Davis at paragraph 24, lines 7-12 as teaching the additional step of generating an SMS or MMS text message from a further voice message. However, Davis at paragraph 24, lines 7-12 refers to generating an instant message, not an SMS or MMS message, from the voice message. Davis itself at paragraph [0007] lines 5-7 makes a clear distinction between instant messages and SMS messages as being different protocols. However the citation provided by the Examiner only describes the creation of an instant message (and not an SMS or MMS message). Accordingly, the Examiner's prior art reference fails to show this as a known element since it fails to establish the generation of an SMS or MMS message from the voice message. Therefore the appellant requests that the Examiner's rejection be traversed and claim 3 should be granted accordingly.

Claim 4

As claim 4 is dependent on claim 1, all the arguments on claim 1 are incorporated herein.

Further the citation in Davis used by the Examiner to prove prior art (paragraph 24, lines 1-18) makes no reference to the caller name or number being added to the converted voice to text file. The Examiner's prior art reference fails to disclose the addition of the caller name or number as prior art. Accordingly the appellant requests that the Examiner's rejection be traversed and claim 4 should be granted.

Claim 5

As claim 5 is dependent on claim 1, all the arguments on claim 1 are incorporated herein.

Further the citation used by the Examiner to prove prior art (McLaughlin, paragraph 213, lines 3-6) fails to show the transcribed text message being displayed on a mobile telephone. The McLaughlin citation refers to a relay operator typing text "to the deaf person's TDD or modem" (paragraph 213, line 6). Further although McLaughlin refers to a "remote device" being used in conjunction with the deaf person's TDD or modem, "[t]he modem is in electrical communication through the telephone line to a remote device" McLaughlin (paragraph 30, lines 3-5). Accordingly the citation provided by the Examiner fails to disclose a mobile phone (second or otherwise). Therefore the appellant requests that the Examiner's rejection be traversed and claim 5 should be granted.

Claim 6

As claim 6 is dependent on claim 1, all the arguments on claim 1 are incorporated herein.

Further as explained above, McLaughlin does not teach a voice to text transcription system that receives a sent audio file as in claim 1 because, as explained above, the sending step (e) in claim 1 is not known prior art. Accordingly the additional functionality of the voice to text transcription system in claim 6 is not disclosed in the prior art cited by the Examiner. Therefore the appellant requests that the Examiner's rejection be traversed and claim 6 should be granted.

Claim 13

As claim 13 is dependent on claim 1, all the arguments on claim 1 are incorporated herein.

Further the citation provided by the Examiner (Davis at paragraph 24, lines 7-12) does not provide the ability for the user of the device to specify the format of the text message. The citation provided by the Examiner only permits one format for the text message, i.e. an instant message (IM) format. As explained above, Davis itself makes a clear distinction between the instant message (IM) and SMS as different message protocols at paragraph [0007], lines 5-7. Yet Davis only teaches the text being sent in the instant message (IM) protocol in the citation provided by the Examiner. Therefore the appellant requests that the Examiner's rejection be traversed and claim 13 should be granted.

Claim 14

As claim 14 is dependent on claim 1, all the arguments on claim 1 are incorporated herein. In the citation in Davis used by the Examiner to prove prior art (paragraph 24) the intended recipient can never been identified by the originator speaking the name of the intended recipient. The citation provided by the Examiner states “[o]perationally, the system 10 as shown in FIG.1 would receive a call from a caller to a callee at step 52.” FIG 1. clearly shows the callers phoning through a PSTN to a Voice Mail System first. Accordingly the intended recipient of the call is always determined by the phone number entered by the caller, and not by the originator speaking the name of the intended recipient. Therefore the appellant requests that the Examiner’s rejection be traversed and claim 14 should be granted.

Claim 17

As claim 17 is dependent on claim 1, all the arguments on claim 1 are incorporated herein. The citation provided by the Examiner at Davis paragraph 7 to prove claim 17 as being obvious completely fails to teach what the Examiner claims it teaches. There is no mention of a database for mobile phones that supports less than a certain amount of text. There is no teaching of an automatic suggestion of the appropriate maximum recording time to the originator. Davis at paragraph 7 merely discusses the background art to Davis and the prior art’s lack of instant messaging abilities. Therefore the appellant requests that the Examiner’s rejection be traversed and claim 17 should be granted.

Claim 18

As claim 18 is dependent on claim 1, all the arguments on claim 1 are incorporated herein.

Examiner in citing Davis at paragraph 24 to support his rejection of claim 18 states "(Davis uses an automated method)" but Examiner also acknowledges that "Davis fails to disclose...(e) sending the audio file to a voice to text transcription system to enable an operator to intelligently transcribe the voice message into a transcribed text message" Final Rejection at page 3, 5th paragraph. Accordingly Davis only uses an automated method for transcribing the voice message. Further McLaughlin only uses a human operator relay system for transcribing a voice message at paragraph 202. Accordingly the proposed combination of a human transcription process and an automated transcription service being used together is not obvious from the prior art references cited by the Examiner. Therefore the appellant requests that the Examiner's rejection be traversed and claim 18 should be granted.

Claim 19

As claim 19 is dependent on claim 1, all the arguments on claim 1 are incorporated herein.

Although the citation provided by the Examiner does not support the statement made by the Examiner in the Final Rejection at Page 5, lines 18-19, the appellant acknowledges there is sufficient disclosure in rest of Davis to support the statement made by the Examiner at Page 5, lines 18-19. Nevertheless because of the arguments for claim 1 above the appellant requests that the Examiner's rejection be traversed and claim 19 should be granted.

Claim 20

As claim 20 is dependent on claim 1, all the arguments on claim 1 are incorporated herein. The Examiner cites Davis at paragraph 24, lines 7-12 as teaching the additional step of generating an SMS or MMS text message from a further voice message. However, Davis at paragraph 24, lines 7-12 refers to generating an instant message, not an SMS or MMS message, from the voice message. Davis itself makes a clear distinction between these instant messages and SMS messages at paragraph [0007], lines 5-7 as different protocols. However the citation provided by the Examiner only describes the creation of an instant message (and not an SMS or MMS message). Accordingly, the Examiner's prior art reference fails to show this as a known element since it fails to establish the generation of an SMS or MMS message from the voice message. Therefore the appellant requests that the Examiner's rejection be traversed and claim 20 should be granted accordingly.

Group II Claims

As all Group II Claims (2, 7-12, 15, and 16) are dependent on claim 1, all the arguments on claim 1 are incorporated for each Group II Claim. Further as explained above, in order to reject the Group II Claims the Examiner needed to cite a fourth prior art reference: Martin, U.S. Patent 6,606,373 in addition to Davis, McLaughlin and Cruickshank. Accordingly it is the appellant's position that for all Group II Claims the need to cite an additional reference on with the other three prior art references removes all legitimacy from the Examiner's 103(a) obviousness analysis. In addition, the appellant notes additional arguments for specific Group II claims as follows:

Claim 2

In addition to the arguments in support of finding the Group II Claims non-obvious, the appellant also notes that Examiner's citation of Martin (column 5, line 63-column 6, line 15) for claim 2 fails to teach adding the time and date of the voice message to the transcribed text message. The citation starts by describing a "list of phrases" that would "generally be common to any message paging system". This list cited by Martin (which is incorporated by reference into Martin at column 5, lines 59-61) is at Appendix A of related US patent application 09/001,717. In reviewing the list in question it is clear that each "phrase" is defined to be a single word or a single string of characters with no spaces, i.e. these "phrases" are not phrases as used regular parlance but singular words or noises. In the citation provided by the Examiner, Martin refers to grouping some of these "phrases" into a "limited vocabulary" (column 6, line 8) or "additional or sub-vocabularies such as" (column 6, line 11) "time specific (e.g., time of day, day of week, season, holiday, etc.)" (column 6, line 13-14) but there is no teaching in Martin that the "phrases" consist of anything more than single words or a single strings of characters with no spaces. Accordingly Martin does not disclose phrases that describe actual times and dates of a voice message, let alone adding these times and dates to the resulting transcribed text message. Therefore the appellant requests that the Examiner's rejection be traversed and this claim should be granted accordingly.

Claim 7

In addition to the arguments in support of finding the Group II Claims non-obvious, the appellant also notes that the citation provided by the Examiner, Martin (column 12, line 52-

column 13, line 4), fails to teach any of the following: a voice to text transcription system that

1) displays to the operator 2) an option to re-route the audio file to 3) a different operator more suited to transcribing the voice message 4) because of linguistic, dialect, or cultural reasons. The cited text does not disclose a display and says nothing about re-routing an audio file or sending the audio file to an operator more suited to transcribing the voice message.

Further linguistic, dialect, or cultural reasons for this selection process are not disclosed anywhere in Martin. Although Martin articulates that it is designed to work with different languages, fundamentally Martin is an audio file matching system that uses a process to break a voice message into individual small audio subparts and then attempts to match these audio subparts to stored audio data patterns (see Martin at column 8, lines 43-54). Further Martin works by each subscriber (i.e. the message recipient) having an associated subscriber record that points at specific audio data patterns thereby creating "subset" of selected audio data patterns for each individual subscriber (Martin at column 7, lines 52-63). Accordingly the invention in Martin is an audio matching process that has increased efficiencies because it uses a limited subset of audio patterns associated with an individual subscriber to match to the audio subparts present in a voice message (see Martin at Fig. 4). There is no linguistic, dialect, or cultural intelligence operating in Martin. Martin simply associates stored audio data patterns to a text file. Therefore, for the foregoing reasons, the appellant requests that the Examiner's rejection be traversed and claim 7 be granted accordingly.

Claim 8

In addition to the arguments in support of finding the Group II Claims non-obvious, the appellant also notes that the Examiner's citation of Martin (column 12, line 52-column 13, line 4) for claim 8 fails to teach a "list of specialised terms that are relevant to cultural sayings, regular events, sporting events, media events, other kinds of newsworthy events". As explained above in the discussion on claim 2, the list cited by Martin at Appendix A of related US patent application 09/001,717 is a list of single words or a single string of characters with no spaces. If the Examiner had cared to review this list he would have seen that this list could not be viewed as being a "list of specialised terms that are relevant to cultural sayings, regular events, sporting events, media events, other kinds of newsworthy events". Therefore the appellant requests that the Examiner's rejection be traversed and claim 8 should be granted accordingly.

Claim 11

In addition to the arguments in support of finding the Group II Claims non-obvious, the appellant also notes the citation in Martin relied on by the Examiner, which discloses a method for providing text summaries of voice messages does not teach a method for summarizing the text message to fit within a limited number of characters, such as the 160 character SMS limit. Therefore the appellant requests that the Examiner's rejection be traversed and claim 11 should be granted accordingly.

Claim 12

In addition to the arguments in support of finding the Group II Claims non-obvious, the citation in Martin relied on by the Examiner for analyzing claim 12 does not disclose a method for omitting “hesitations, artefacts, or unnecessary repetitions present in the voice message” in the transcribed text summary of the voice messages. Indeed given the audio matching functions in Martin, Martin teaches away from the claimed invention because it would capture artefacts and repeated phrases if they matched the stored audio files in question. Therefore the appellant requests that the Examiner’s rejection be traversed and claim 12 should be granted accordingly.

Claim 15

In addition to the arguments in support of finding the Group II Claims non-obvious, the citation in Martin relied on by the Examiner (column 12, lines 52-59) fails to identify mobile phone (second or otherwise) using the parsed data on an application running on a mobile phone. From the citation provided by the Examiner the only application disclosed in the cited text is the summary index controller 920 analyzing the message summaries to generate an index of message summaries that may be transmitted to the message pager of the subscriber. But at the beginning of the paragraph cited by the Examiner the summary index controller 920 is described as being a component within the process control server 130 (Martin at column 12, lines 46-50). Further, Fig.1 in Martin depicts the process control server 130 as being a component of the message paging system 100 that links the PSTN 115 to the paging terminal network 140. Clearly the application described in the text cited by the Examiner is not running

on a mobile phone as in claim 15. Therefore the appellant requests that the Examiner's rejection be traversed and claim 15 should be granted accordingly.

Claim 16

As claim 16 is dependent on claim 15, the above argument for claim 15 is incorporated herein. Further the citation used by the Examiner is does not teach the invention in claim 16 because the invention in claim 16 extracts information (i.e. phone number, email, physical address, web address, etc.) from the parsed data. The process cited by the Examiner (Martin, column 14, lines 3-11, 32-47) merely tabulates and organizes information that already existed in the data repository (see Martin, column 14, lines 21-31). Therefore the appellant requests that the Examiner's rejection be traversed and claim 16 should be granted accordingly.

3. Examiner failed to analyze the claimed invention as a whole on the entire record

On a closely related matter to the combination of prior art issue above, it is appellants' position that the Examiner's conclusion of §103(a) obviousness was incorrect because the Examiner failed to analyze the claimed invention as a whole on the entire record.

The law in this area is clear, and the duties imposed on examiners are explained in full detail from the following sections of the MPEP:

"The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992)." MPEP 2142.

"In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether

the claimed invention as a whole would have been obvious." MPEP 2141.02 I. (citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983) and *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983)).

"In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person.

Knowledge of appellant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention." MPEP 2142

In this case from the evidence in the record, it is the appellant's position that when the Examiner analyzed the amended claims as filed by the appellant on March 17, 2008 the Examiner was clearly required to make a "determination whether the claimed invention "as a whole" would have been obvious".

In comparing the written text of the Examiner's non-final rejection in this case (filed on February 7, 2008 and hereinafter "Non-Final Rejection") compared with the written text of the Final Rejection (filed on June 20, 2008) it is clear that the Examiner only analyzed the differences of the claim language between the claims in the Non-Final Rejection and the amended claims filed by the appellant on March 17, 2008. But the Examiner needed to do more than just this. The Examiner needed to analyze if the claimed invention "as a whole" would have been obvious.

In failing to do this, the Examiner's actions (and inactions) speak directly to an issue discussed in *KSR*: "[I]t can be important to identify a reason that would have prompted a person of

ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." *KSR*, 550 U. S. at ___, 82 USPQ2d at ___.

In *KSR*, the main holding of the Supreme Court was that the so-called "teaching, suggestion, or motivation" test (TSM test) should not be applied as a "rigid and mandatory formula" or as a "rigid rule". On the other hand the US Supreme Court did not expunge the TSM test from being used when analyzing claims. In fact the court in *KSR* did the complete opposite when it said: "When it first established the requirement of demonstrating a teaching, suggestion, or motivation to combine known elements in order to show that the combination is obvious, the Court of Customs and Patent Appeals captured a helpful insight." See *Application of Bergel*, 292 F. 2d 955, 956–957 (1961)", *KSR*, 550 U. S. at ___, 82 USPQ2d at ___.

Therefore it is appellant's position that given the complexity of the combination of the prior art references used by the Examiner and the language of *KSR* on the TSM test that the Examiner's failure to perform an investigation into the claimed invention "as a whole" and the failure to perform an investigation into the "teaching, suggestion, or motivation to combine known elements" produced in an erroneous conclusion of §103(a) obviousness.

As explained in the summary of the claimed subject matter above, the claimed invention at issue is a speech-to-text conversion system for voice messages spoken into a mobile telephone that causes the transcribed text messages to be sent to a required destination. But there is more to the claimed invention than just this. In claim 1 there are the additional steps of creating a unique i/d and assigning it to the voice message, converting the voice message to an audio file format, sending the audio file to a voice to text transcription system to enable an

operator to intelligently transcribe the voice message into a transcribed text message, and embedding the unique i/d in the transcribed text message. The reasons for claiming these additional steps were given in the specification; however, the Final Rejection provides no evidence that the Examiner considered these reasons.

In the specification the reasons for the claimed invention are clearly provided. In Fig. 1 the use of the unique i/d within the Network Operator Services produces a Synchronization of message stores as shown by point 7, which is further explained in the specification:

“[0067] 7 Positive delivery of SMS/MMS synchronizes the SMS/MMS store with Voicemail store as message ‘read’.”

In the alternative embodiments of the invention as shown at Fig. 2 and Fig. 3, which are for different operator/service provider configurations, their respective points 7 are different than Fig. 1 but are explained in paragraphs [0085] and [0106] (which both read the same):

“7 To Hear the original voicemail, the user is connected back to Service Company’s Voicemail Storage server. The unique i/d (hidden from the user in the SMS/MMS message) retrieves the correct file to play back.”

In describing the statistics to be viewed and analyzed by a Transcription Bureau Manager (a transcription bureau being a place where human operators receive the routed audio files, as explained in paragraph [0145]) the specification includes:

“[0261] Transcription accuracy – done by taking a random sample daily and measuring accuracy against original ...”

Further the specification notes the confidentiality requirements imposed on the Transcription service which "must minimally provide complete confidentiality of messages it transcribes within the Data Protection Act 98 or other legislation in force at the time", on the first sentence in the table headed "REQUIREMENT" under "Confidentiality" on page 10 of the US Patent Application Publication in question, 2007/0054678.

So as stated in the specification, the claimed invention provides server synchronization, message retrieval, and message conversion quality analysis capabilities for a voicemail-to-text conversion system that can work across different network operator/service company configurations while still fulfilling the necessary data protection and confidentiality requirements. Accordingly it is the appellant's position that the Examiner's failure to recognize these additional capabilities of the claimed invention resulted in an erroneous conclusion of 103(a) obviousness and therefore the appellant requests that the Examiner's rejection are now hereby traversed and claims 1-20 be granted accordingly.

4. New evidence of "secondary considerations" needs to be considered

Finally, and in addition to the arguments presented above, new strong and persuasive evidence of "secondary considerations" needs to be considered in the 103(a) obviousness analysis.

On July 16, 2006, the date of filing the Notice of Appeal in this case, the appellant also filed a 37 CFR 1.132 Affidavit of Daniel Michael Doulton (hereinafter "Affidavit"). The filing of this Affidavit is considered timely under MPEP 716.01(A)(3) which states: "Affidavits and declarations submitted under 37 CFR 1.132 and other evidence traversing rejections are considered timely if submitted:... (3) after final rejection, but before or on the same date of

filling an appeal, upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented in compliance with 37 CFR 1.116(e)."

The Affidavit explains why this is necessary and why there were good and sufficient reasons it was not earlier presented. First, the Affidavit contains new strong and persuasive evidence of secondary considerations which is germane to the issue on appeal: 103(a) obviousness of the claims.

Next, the Affidavit explains why this new evidence could have been disclosed on or before the appellant's response to the Non-Final Rejection. As shown in the record in this application, the appellant's response to the Non-Final Rejection was filed with the Office on March 17, 2008.

Two days later, SpinVox Limited, the assignee of this application, secured more than \$100 million in private placement funding (Affidavit at 4). On the day the appellant responded to the non-final office action, March 17, 2008, SpinVox Limited was prohibited from disclosing this information to the general public (Affidavit at 5). Further the same information contained in the Affidavit was filed with the Office on April 8, 2008 by another 1.132 affidavit for a related action: Application, 10/553,926 (Affidavit at 7).

Accordingly as the Affidavit explains why the \$100 million+ private placement funding could not be disclosed until March 19, 2008 and the evidence of the \$100 million+ funding is strong evidence of secondary considerations, the appellant hereby requests that the consideration of the Affidavit is timely filed and must be considered by the Examiner in his 103(a) obviousness analysis.

The importance of secondary considerations cannot be ignored by the Examiner given the weight and importance placed on them by the US Supreme Court in *KSR International Co. v. Teleflex Inc.*:

“[S]econdary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *KSR*, 550 U.S. ___, ___ 127 S.Ct. 1727, ___, 82 USPQ2d 1385, ___ (2007) citing *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1, 17–18 (1966).

Accordingly given the importance the US Supreme Court placed on secondary considerations in the analysis of obviousness, the appellant hereby respectfully requests that the analysis must look at the secondary considerations presented in the Affidavit.

As shown by the evidence in the Affidavit, claims 1-20 are fundamental to the core business of SpinVox Limited (Affidavit at 3).

In March 2008 SpinVox Limited received an additional \$100 million in funding from private investors (see para 1 of the Reuters, March 19, 2008 article identified in Affidavit at 4 (hereinafter “Reuters”)) doubling the total investment in SpinVox Limited to \$200 million (Reuters, para 12). SpinVox Limited also has a valuation in excess of \$500 million (Reuters, para 2) and has deals with at least 12 cellphone carriers globally including Alltel Wireless, the fifth-largest US carrier (Reuters, para 4).

The long-felt need of the benefits arising from transcribing voice mail messages to text has been recognized in the marketplace (see pages 1-3 of the New York Times, February 15, 2007

article identified in Affidavit at 6 (hereinafter "NY Times"). Further these services are being provided by companies that arrived to the market after SpinVox Limited (page 1, para 4 and page 2, paras 6-7, NY Times).

On the basis of this evidence, which clearly demonstrates the success of the current claimed invention in the marketplace, it is appellant's position that the secondary considerations of commercial success, long-felt need and copying by others, as shown in the evidence provided clearly demonstrates the nonobviousness of claims 1-20.

Accordingly, in addition to reasons explained above, the appellant now respectfully requests that the Examiner must incorporate this evidence of secondary considerations and reverse the earlier rejections and allow claims 1-20.

Conclusion

Having established that the Examiner 1) failed to establish the prior art elements as being "known", 2) failed to establish obviousness in the combination of the prior art elements, 3) failed to review evidence of nonobviousness of the claimed invention "as a whole" and 4) must incorporate new evidence of secondary considerations into his analysis, the appellant now respectfully requests that the rejections of claims 1-20 be reversed and all claims 1-20 be granted accordingly.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Mark D. Fox".

Mark D. Fox
Reg. No. 38,677

Claims Appendix

1. A method of generating a text message from a voice message spoken into a first mobile telephone with SMS or MMS text capability, the method comprising the steps of:

- (a) an end-user message originator speaking the voice message into the first mobile telephone;
- (b) creating a unique i/d;
- (c) assigning the unique i/d to the voice message;
- (d) converting the voice message to an audio file format;
- (e) sending the audio file to a voice to text transcription system to enable an operator to intelligently transcribe the voice message into a transcribed text message;
- (f) embedding the unique i/d in the transcribed text message; and
- (g) causing the transcribed text message to be sent to a required destination.

2. The method of Claim 1 in which the transcribed text message has added to it the time and date of the voice message.

3. The method of Claim 1 in which a further voice message is originated at a another mobile telephone or at a landline telephone and a SMS or MMS text message is generated from that further message using the method of Claim 1.

4. The method of Claim 1 in which the transcribed text message has added to it the originator name and/or number (MSISDN).

5. The method of claim 4 in which the transcribed text message is displayed on the second mobile telephone as though it was sent directly from an originator of the voice message.

6. The method of Claim 1 in which the voice to text transcription system does not display to the operator the telephone number associated with the first mobile telephone.
7. The method of Claim 1 in which the voice to text transcription system displays to the operator an option to re-route the audio file to a different operator that is more suited to transcribing the voice message because of linguistic, dialect, or cultural reasons.
8. The method of Claim 1 in which the voice to text transcription system provides the operator with a searchable list of specialised terms that are relevant to cultural sayings, regular events, sporting events, media events, other kinds of newsworthy events to assist the operator in accurately transcribing those specialised terms.
9. The method of Claim 1 in which the operator represents the mood of the caller leaving the voice message in the transcribed text message using either a written description or an emoticon.
10. The method of Claim 1 in which the operator succinctly summarises the voice message.
11. The method of Claim 1 in which the operator summarises the voice message to fit it the 160 character SMS limit or subsequent concatenated text messages.
12. The method of Claim 1 in which the operator omits from the transcribed text message any hesitations, artefacts, or unnecessary repetitions present in the voice message.
13. The method of Claim 1 in which the text message is sent to the second mobile telephone in a format previously specified as appropriate by the user of the device.
14. The method of Claim 1 in which the originator of the voice message speaks the name of the intended recipient and the operator or a speech recognition system is able to extract the

relevant telephone number of the second mobile phone, email address or other address by looking up that name in a web-based address book associated with the originator.

15. The method of Claim 1 comprising the further step of parsing the transcribed text message and using the parsed data in an application running on the second mobile telephone.

16. The method of Claim 15 in which parsing and using the parsed data involves one or more of the following: (a) extracting the phone number and allowing it to be used (to make a call), saved, edited or added to a phone book; (b) extracting an email address and allowing it to be used, saved, edited or added to an address book; (c) extracting a physical address and allowing it to be used, saved, edited or added to an address book; (d) extracting a web address (hyperlink) and allow it to be used, edited, saved or added to an address book or browser favourites; (e) extracting a time for a meeting and allow it to be used, saved, edited and added to an agenda as an entry; (f) extracting a number and saving it to one of the device applications; (g) extracting a real noun and providing options to search for it or, look it up on the web (WAP or full browser).

17. The method of Claim 1 in which, for mobile phones that support less than a certain amount of text, there is an initial look up of the text limitations in a database and then an automatic suggestion of appropriate maximum recording time to the originator.

18. The method of Claim 1 when used in conjunction with an automated voice recognition system to speed up the processing of the audio file.

19. A text message which has been transcribed from a voicemail and is provided to a wireless information device using the method of Claim 1.

20. A mobile telephone programmed with an application that enables an end-user originator of a message to cause a SMS or MMS text message to be generated from that voice message by the performance of the method of Claim 1.

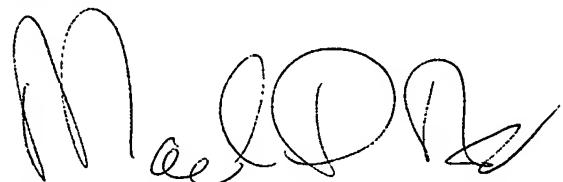
Related proceedings Appendix

There are no decisions on related appeals or interferences.

Evidence Appendix

A copy of the 37 CFR 1.132 Affidavit of Daniel Michael Doulton as filed with the USPTO on July is attached hereto.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Mark D. Fox".

Mark D. Fox
Reg. No. 38,677

37 CFR 1.132 AFFIDAVIT OF DANIEL MICHAEL DOULTON

I, Daniel Michael Doulton, hereby declare that all statements made in this Affidavit based on information and belief is believed to be true. I further declare that all statements made in this Affidavit based on my own personal knowledge are true.

1. I, Daniel Michael Doulton, am the inventor in Application Number 10/554,022 entitled "METHOD OF GENERATING A SMS OR MMS TEXT MESSAGE FOR RECEIPT BY A WIRELESS INFORMATION DEVICE" (hereinafter the "Voice Messenger '022 Application") and Application Number 10/553,926 entitled "METHOD OF PROVIDING VOICEMAILS TO A WIRELESS INFORMATION DEVICE" (hereinafter the "VoiceMail View '926 Application").
2. I, Daniel Michael Doulton, am the cofounder and Chief Strategy Officer of SpinVox Limited, the assignee of record of the Voice Messenger '022 Application and VoiceMail View '926 Application.
3. Claims 1 to 20 of the Voice Messenger '022 Application, as filed with the US Patent and Trademark Office on March 17, 2008 describe fundamental inventions to the core business operations of SpinVox Limited (hereinafter "SpinVox").
4. Attached to this Affidavit as is a true and correct copy of a two (2) page press article from Reuters dated March 19, 2008 entitled "SpinVox raises \$100 million from Goldman, others" (hereinafter "Reuters Press Release").
5. On March 17, 2008, two days before the date of the Reuters Press Release and the date claims 1 to 20 of the Voice Messenger '022 Application were filed with the US Patent

and Trademark Office, the information about SpinVox raising \$100 million in funding could not be disclosed to the general public.

6. Attached to this Affidavit as is a true and correct copy of a four (4) page press article titled "Freedom for Prisoners of Voice Mail" from The New York Times dated February 15, 2007 (hereinafter "NY Times Article").
7. On April 8, 2008 I executed a 37 CFR 1.132 affidavit for the VoiceMail View '926 Application that was duly admitted by the US Patent and Trademark Office. This affidavit had the Reuters Press Release and NY Times Article attached as exhibits.

This Affidavit being duly signed and executed on July 11¹ 2008 in Alpharetta, Georgia.



Daniel Michael Doulton



REUTERS

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SpinVox raises \$100 million from Goldman, others

Wed Mar 19, 2008 7:55pm GMT

By Anupreeta Das

SAN FRANCISCO, March 19 (Reuters) - SpinVox, which converts voicemail messages into text and sends them to a recipient's inbox or phone, has raised more than \$100 million in funding from a Goldman Sachs Group Inc (GS.N: [Quote](#), [Profile](#), [Research](#)) unit and other institutional investors, the company said on Wednesday.

This third round of funding values London-based SpinVox "in excess of \$500 million," co-founder and Chief Executive Christina Domecq said in an interview.

SpinVox plans to use the money to expand its presence in North America and introduce voice-to-text services in more languages, she said.

SpinVox has deals with 12 cell phone carriers globally, including Canada's Rogers Mobile and Alltel Wireless, the fifth-largest U.S. carrier, and plans to double that number this year.

It is negotiating with all the top U.S. network carriers and expects to announce two deals in the next quarter, Domecq said.

"Voicemail is not a very sexy subject," she said. "The carriers are all looking for ways of driving new revenue streams, and increased voice and text traffic is the perfect way to do that."

Domecq estimated that the global market for voice-to-text services in English, French, German and Spanish -- languages in which SpinVox already offers its service -- is worth about \$5 billion annually.

PORTRUGUESE, ITALIAN, ARABIC

SpinVox, which has 300 employees and offices in nine countries, will use a portion of the \$100 million to develop its service in Portuguese, Italian and Arabic, Domecq said.

SpinVox's software works simply by converting a voicemail message into text, which it then e-mails to a computer or sends via SMS to a phone. It removes the need to dial one's voicemail, punch in a password and listen to messages.

"It's a simple idea built out of frustration," said Domecq, a 31-year-old IT

entrepreneur who co-founded SpinVox four years ago.

"Why do I have to pull everything out of my purse and get out a pen and paper to jot down a voicemail?" she said, explaining how the idea was born. "I just didn't get it."

The latest round includes funding from GLG Partners, Blue Mountain Capital Management and Toscafund Asset Management, and doubles the amount raised so far to \$200 million, Domecq said. The company previously raised cash from angel investors and private equity firms.

SpinVox is also working to provide voicemail conversion for office phone systems. It earlier signed an agreement to provide its service for users of Skype, which is owned by eBay Inc (EBAY.O: Quote, Profile, Research). The service is expected to launch in the second half of this year, Domecq said.

It also has a downloadable application for social networks Facebook and News Corp's (NWSA.N: Quote, Profile, Research) MySpace.

Goldman Sachs International advised SpinVox on the latest round of funding.

The company has no immediate plans to go public or sell itself but is exploring all options, Domecq said. (Editing by Brian Moss)

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Thomson Reuters journalists are subject to an Editorial Handbook which requires fair presentation and disclosure of relevant interests.

February 15, 2007**STATE OF THE ART**

Freedom for Prisoners of Voice Mail

By **DAVID POGUE**

When you dig down past the megahertz and pixels and scroll wheels, all technology boils down to variations of “time is money” — and nobody knows it better than cellphone carriers. Every time you use your cellphone, you’re spending money.

No wonder that when you call to check your messages, the carriers make you listen to a woman who has evidently overdosed on Ambien. “You have. Seven. New. Messages. You have. Two. Saved messages. To listen to your messages, press 1. When you are finished, you may hang up, or press 5 for more options. I will now read the Manhattan White Pages.”

For those 20 seconds, you’re a sitting duck, forced to spend both time and money. The carrier is using technology to squeeze a few more cents out of you every day.

But now you can fight technology with technology. Two new services, SpinVox and SimulScribe, use voice-recognition software to transcribe voice mail messages into e-mail.

Why is this a brilliant, life-changing development? Let us count the ways:

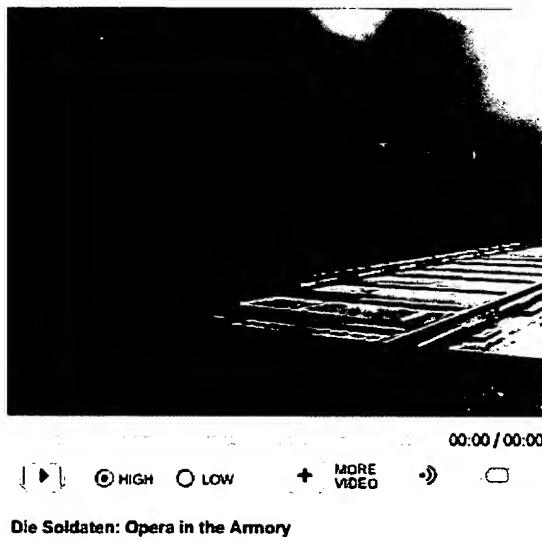
1. You can read message transcripts in a fraction of the time you’d spend listening to them.
2. You now have random access to your messages. You will never again sit through five chit-chatty messages, unaware that Message 6 is a time-critical bit of urgency from your boss, your spouse or a friend who wants to give away an extra concert ticket.
3. You don’t have to take notes as you listen, writing down people’s names and numbers. The notes have already been taken for you.
4. Text is searchable, sortable, copyable, pastable, printable and forwardable. What an awesome thing, to have a Find command for your entire backlog of voice messages. Want to pull up that message about the Smithson merger? Just hit Find in your e-mail program, type “merger,” and pluck it out of the haystack.
5. You can opt to have the transcriptions sent to your cellphone as text messages, too (or instead), for when you’re on the go. This works perfectly on e-mail phones like the Treo and BlackBerry. It works less perfectly on other cellphones, whose low length limit means that each transcript gets split into several text messages.
6. You can check your messages even if you’re deaf — or temporarily so, because you’re in the subway or at a rock concert.

7. SimulScribe lets you save the momentous messages of your life — the marriage proposal, the “he’s just not into you” call, the “you’re hired” call — in a handy audio archive of your life. That’s because each SimulScribe e-mail message arrives with an audio-file attachment. Its primary purpose is to provide you with a backup, to check against the transcription. But you’ll quickly discover how nice it is to be able to save that file separately for future reference, just the way you might save important e-mail.

8. You can copy people’s phone numbers right into your address book (either your computer’s or your phone’s).

9. If a voice mail transcript arrives on your Treo, BlackBerry or other smartphone, you can generally call the person back just by clicking the phone number where it appears in the message.

10. You can do “typing” for work when you’re on the run. That is, you can leave messages for yourself, dictating e-mail, ideas or whatever, thus turning the service into a virtual secretary. In fact, SpinVox can even post transcripts directly to your blog.



All right, all right — you’re probably thinking, “Down, boy.” And it’s true that there are a few gotchas along the way.

SimulScribe (simulscribe.com) is available right now. It costs \$10 a month, which covers 40 messages; each additional transcription costs 25 cents. This can become very expensive if you get a lot of messages. The company plans to offer better deals for frequent phoners — including an unlimited plan — in the coming months.

SpinVox, on the other hand, has been operating in Britain for some time. It will be free during its year of testing in the United States.

To sign up for the free year, send an e-mail inquiry to gamma@spinvox.com. (Ignore the “seven-day trial” offered at spinvox.com; that’s just for British customers.) Eventually — in the second half of this year, SpinVox says — the service will be available in the United States only through cellular carriers; pricing hasn’t been set. That’s right: you’ll be able to spend more money with your carrier to spend less time on its voice mail system.

When you sign up for either service, an e-mail message gives you instructions for reprogramming your phone. For most carriers, that involves dialing a string of numbers with * and # characters; for Sprint, you have to call customer service. Either way, this process reroutes incoming messages to the SpinVox or SimulScribe service. (Until you re-record the greeting, callers hear a generic “Welcome to SimulScribe” or “Welcome to SpinVox” message.)

From now on, every time someone leaves you a message on your cellphone voice mail, it costs you airtime, because the call has to be forwarded to SpinVox or SimulScribe. (Both services are, in principle, compatible with your home phone, too, as long as your phone company offers something called “no-answer call

forwarding.”)

On the other hand, you no longer eat up airtime listening to those messages, so your net airtime cost is nothing. The exception, again, is Sprint, which charges 20 cents a minute for forwarding. Ouch.

Callers leave messages as usual; they don’t have to do or say anything different. In two to five minutes later, you get a new e-mail message, cellphone text message, or both. The subject line identifies the caller’s phone number and the time and date of the message.

The body of the message contains the transcript. Since it’s computer-generated (no humans hear your messages), it’s not always 100 percent accurate. But considering the poor quality of cellphone audio, it’s astoundingly close.

Here, for example, is the transcript of a test message left by a friend: “Hi, David. This is Adam. I just wanted to say I had a good time at dinner last night. One thing, though, I noticed that you dropped a bunch of the banana peel on your way out in the driveway, and my wife walked out of the house this morning and slipped on a few, and she broke her head. So anyway, when I see you at work tomorrow I’ll give you the receipt from the doctor and just have you pay for it. Anyway, see you soon. Bye.”

In this message, only two words were misrecognized: “peel” should have been “peels,” and “broke her head” should have been “broke her hip.” The software added the punctuation — not bad.

SpinVox has an affinity for run-on sentences, using commas instead of periods between sentences; “(?)” and “___” denote words it’s not sure about. SimulScribe may punt on names, typing, for example, “(phonetic: Ka Reema)” for Karima and substituting “(garbled)” where a phrase was truly unintelligible. But you virtually always get the point, especially because both services nail mission-critical digits like phone numbers and times.

If in doubt about a SimulScribe transcription, you can play the audio recording right there in the e-mail message. SimulScribe also offers a terrific Web page, where all your messages, past and present, await in an unlimited in-box-style list.

Neither service interferes with your ability to check your voice mail the traditional way — by dialing an access number from your cellphone and sitting through the playback. In fact, with SpinVox, that’s the only way to hear the original message. You can also switch back to your carrier’s voice mail system at any time, temporarily or permanently.

Thanks to its in-message audio attachments, SimulScribe is superior at the moment, although it’s hard to resist SpinVox’s free one-year offer. Either, however, will equip you with the most powerful efficiency tool to arrive in a very long time. Both are extraordinarily good at performing two kinds of conversions: audio into text — and money into time.

E-mail: Pogue@nytimes.com

